

## ***FWP COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** June 5, 2013

**Agenda Item:** Clark Fork River and Warm Springs Wildlife Management Area Closure Rules

**Division:** Fisheries

**Action Needed:** Adopt Final Annual Rule

**Time Needed on Agenda for this Presentation:** 10 minutes

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### **Background**

At its April meeting the commission proposed a rule that would close a 1.75 mile section of the Clark Fork River and a small portion of the Warm Springs Wildlife Management Area. The Department of Environmental Quality (DEQ) is conducting a cleanup project to remove contaminated soils in the streambanks and historic floodplain within the Clark Fork River near the community of Warm Springs. The project is part of the Milltown Reservoir/Clark Fork River Superfund Site. The first phase of construction, initiated in March of this year, begins at the river's headwaters below Warm Springs Ponds and proceeds downstream for approximately 1.75 river miles. Phase 1 cleanup activities will last approximately one year. Heavy equipment is being used to remove heavy metals and arsenic contaminated soils, and to conduct streambank revegetation. Haul trucks and heavy equipment are using a road within the Warm Springs Wildlife Management Area (WMA), which is adjacent to the north boundary of the project area. This portion of the Clark Fork River is a popular catch-and-release brown trout fishery. Anglers were entering the construction area and encountering heavy equipment in close proximity. Anglers were also encountering haul trucks and other heavy equipment on the WMA road, which is too narrow to accommodate construction equipment and public vehicles at the same time. This situation presented a serious public safety concern and DEQ requested that FWP implement an emergency closure of 1.75 miles of river, the WMA road, and a 10-acre section of the WMA located between the road and the construction zone. FWP concurred that there was an imminent threat to public safety and adopted an emergency closure rule on March 29, 2013. By statute (2-4-303, MCA), an emergency rule may be in effect no longer than 120 days, which means that the emergency rule will expire on July 26, 2013. Phase 1 of the cleanup project will continue past this date, which necessitates continuing the closure beyond the July 26, 2013 date.

### **Public Involvement Process & Results**

FWP received one comment. This person supports the proposed closure and the work being done to clean up the area. This person also noted that the access road is adjacent to their residence and expressed concerns about dust and weeds associated with public traffic. These concerns are not related to the proposed closure but have been noted by the department.

### **Alternatives & Analysis**

The commission could choose not to adopt the annual rule. The emergency rule would expire on July 26. Public safety would be a concern in the vicinity of the cleanup area. The contractor, needing to comply with safety regulations, could deem conditions unsafe and cease cleanup efforts.

### **Agency Recommendation & Rationale**

FWP recommends that the commission adopt an annual rule that would continue the closure beyond the expiration of the emergency rule and give FWP, with approval from the local commissioner, authority to repeal the rule once conditions no longer present an undue hazard to public safety. The rule would address public safety concerns that otherwise might jeopardize the completion of the Superfund project.

### **Proposed Motion**

I move that the commission adopt an annual rule closing 1.75 river miles of the Clark Fork River, 10 acres of the Warm Springs WMA, and 1/3 mile of the WMA road.